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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/562,273	12/22/2005	James R. Burfiend	US030196	6573

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS  
P.O. BOX 3001  
BRIARCLIFF MANOR, NY 10510

EXAMINER
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STEPHENS III, JOSE S

ART UNIT	PAPER NUMBER
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3728

MAIL DATE	DELIVERY MODE
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01/08/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/562,273	<b>Applicant(s)</b> BURFIEND ET AL.	
	<b>Examiner</b> JOSE S. STEPHENS III	<b>Art Unit</b> 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 3,6,9 and 11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3,6,9 and 11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

1. This Office Action acknowledges the applicant's amendment filed 22 September 2009. Claims 3, 6, 9, and 11 are pending in the application; and claims 1, 2, 4, 5, 7, 8, and 10 have been cancelled.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 3, 6, 9, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakamura et al. (US Patent 6,220,702) in view of Bosch (US Patent 6,419,117).

Regarding claims 3, 6, 9, and 11, and the intended use of the claimed invention "for a fluid, for use with a personal hygiene device", it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed

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does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. If the prior art structure is capable of performing the intended use, then it meets the claim. *Ex parte Masham*, 2 USPQ2d 1647.

With respect to claims 3 and 6, figure 6 of Nakamura discloses a flexible container (container in figure 6) capable of being used for a fluid, for use with a personal hygiene device, comprising a flexible bag (bag in figure 6) having a front panel portion 1 and a rear panel portion 2 and sealed along a bottom edge (1c and 2c) thereof, defining an interior volume for fluid, and further having a gusset (3 and 4) along each longitudinal edge thereof which connect the front and rear panel portions thereof and allows the front and rear panel portions to expand away from each other when the bag is filled, and wherein the bag includes two sealed wing portions (6 and 7) on either side of a central portion at a top end (1d and 2d) thereof, wherein the central portion includes a spout element 5 which is constructed to permit exit of fluid from the container after it has been filled.

Nakamura discloses the claimed invention except for the wing portions extending above the central portion of the bag, terminating approximately in the plane of a top edge of the spout element, and wherein the wing portions include an inner edge which extends to the central portion separately from the spout element, wherein the wing portions each include an open section which extends above the gusset in fluid communication with the interior volume of the container, the open sections extending inwardly from opposing side edges of the container a small distance compared to the width of the container, the remainder of the wing portions, to the central portion, being

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sealed, the open sections allowing the gusset to expand fully, permitting the bag to fill completely.

Figures 1 and 6 of Bosch discloses a container 1 where a top edge (see subsequent figure) of the container extends above a central portion (see subsequent figure) of the bag (see subsequent figure), terminating approximately in the plane of a top edge of a spout element 14, and wherein the top edge includes an inner edge (see subsequent figure) which extends to the central portion separately from the spout element, wherein the top edge each includes an open section (see subsequent figure) which extends above the side edge of the container in fluid communication with the interior volume of the container, the open sections extending inwardly from opposing side edges of the container a small distance compared to the width of the container, the remainder of the top edge, to the central portion, being sealed.

It would have been an obvious matter of design choice to modify the shape of the flexible container of Nakamura by extending the wing portions above the central portion of the flexible container, as shown by the shape of the container of Bosch in figure 1. Note that a change in shape was recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

Claim 9 claims the personal hygiene device is a power toothbrush and a personal hygiene device was not positively claimed in claim 6. Therefore the personal hygiene device is treated as intended use and is given little patentable weight. Since the power toothbrush is further limiting the personal hygiene device, it is also treated as intended use and is given little patentable weight.

With respect to claim 11, the combination of Nakamura in view of Bosch discloses the claimed invention except for Bosch. Figures 1 and 6 of Bosch disclose a container 1 comprising a spout element 14 that has a valve 4. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the container of Nakamura by incorporating a valve in order to permit exit of fluid therefrom, as taught by Bosch (column 3, lines 55-60).

### ***Response to Arguments***

5. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSE S. STEPHENS III whose telephone number is 571-270-3797. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on 571-272-4828. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JSS

/Ehud Gartenberg/  
Supervisory Patent Examiner, Art Unit 3728